

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.329 OF 2022

Dr. Tushar S/o. Chandrakant Nehete,
Age : 41 years, Occu:- Doctor,
R/o. Suhasini Maternity Home,
436, Vivekanand Nagar, Jalgaon,
Tq. & Dist. Jalgaon.

...Petitioner

Versus

1. The State of Maharashtra
2. The Chief Medical Officer,
Jalgaon Municipal Corporation,
(Dr Ram Rawlani)
Municipal Corporation Hospital,
Shahu Nagar, Jalgaon.

...Respondents

Mr. G.V.Mohekar Advocate for Petitioner
Mr G.O. Wattamwar, APP for the State/Respondent No.1
Mr M.V. Navandar, Advocate for Respondent No.2

WITH
CRIMINAL WRIT PETITION NO.1202 OF 2021

Dr. Tushar S/o. Chandrakant Nehete,
Age : 41 years, Occu:- Doctor,
R/o. Suhasini Maternity Home,
436, Vivekanand Nagar, Jalgaon,
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Mr. G.V.Mohekar Advocate for Petitioner
Mr G.O. Wattamwar, APP for the State/Respondent No.1
Mr M.V. Navandar, Advocate for Respondent No.2

CORAM : SHRIKANT D. KULKARNI, J.
RESERVED ON : 14th SEPTEMBER, 2022
DELIVERED ON : 13th OCTOBER, 2022

JUDGMENT :

1. Heard finally with consent of both the sides.
2. The petitioner by way of two criminal writ petitions, is seeking following reliefs in respective petition :-

CRIMINAL WRIT PETITION NO. 329 OF 2022

(B) By issuing writ of certiorari or any other appropriate Writ or order or direction in the like nature, the impugned judgment and order dated 06/03/2019 passed by Ld. Sessions Judge in Cri. Rev. Appl. No. 92/2014 and consequently impugned order dated 24/03/2014 below Exh. 01 in RCC No. 506/2011 may kindly be quash and set aside.

CRIMINAL WRIT PETITION NO. 1202 OF 2021

(B) By issuing writ of certiorari or any other appropriate Writ or order or direction in the like nature, the impugned judgment and order dated 30/08/2021 passed by Ld. Sessions Judge in Cri. Rev. Appl. No. 165/2019 and consequently impugned order dated 25/09/2019 below Exh. 01 in RCC No. 506/2011 may kindly be quash and set aside.

3. Heard Mr G.V. Mohekar, learned counsel for the petitioner, Mr G.O. Wattamwar, learned APP for the State/Respondent No.1 and Mr M.V. Navandar, learned counsel for respondent No.2/Competent Authority.

4. It is necessary to have a brief survey on the facts of the petitions, which are relevant and important.

5. The petitioner is a Doctor by profession and runs his hospital in the name and style as "Suhasinee Maternity Home and Hospital" at Jalgaon. He is a Gynecologist. The hospital is having necessary medical facilities like delivery room, operation theatre and sonography machine, which is installed with prior permission of the competent authority under the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 2003 (hereinafter referred to as "the PC-PNDT Act, 2003" for the sake of brevity) and the same is registered as per the Rules.

6. On 12.04.2011 at about 10.00 p.m. a squad of the competent authority inspected the sonography centre of the petitioner's hospital on the basis of information received from reliable sources about the procedure for medical termination of pregnancy of a woman after conducting test, which is banned under the PC-PNDT Act, 2003. The squad recorded statement of patient Sow. Vandana Bhoite and her husband resident of Kalamsara, Tq. Pachora, Dist. Jalgaon. It was revealed in the inspection and after recording statements that proper record was not maintained by the hospital. The petitioner has terminated the pregnancy of the patient - Vandana Bhoite as it was a girl-child. It was revealed that indoor patient register was found incomplete, register of case papers of the patient was also found incomplete and the case history book was also found incomplete. The petitioner alleged to have committed

breach of the provisions of the PC-PNDT Act, 2003 and Rules made thereunder. A notice was served on the petitioner and called upon his explanation. His explanation was found unsatisfactory. The competent authority lodged complaint against the petitioner in the Court of Judicial Magistrate First Class at Jalgaon on 21.07.2021, which is registered as R.C.C. No. 506/2011 for the offences punishable under sections 22 and 23 of the PC-PNDT Act, 2003 and under section 463 and 465 of I.P.C.

7. The learned Chief Judicial Magistrate, Jalgaon was pleased to issue process under section 22 punishable under section 23 of the PC-PNDT Act, 2003 and section 463 and 465 of I.P.C. vide order dated 08.11.2011. The order of framing charge dated 24.03.2014 against the petitioner under section 4(2), 4(3), 5(1) read with Rule 9, Section 5(2) and 6(a) punishable under section 23 of the PC-PNDT Act, came to be passed.

8. The petitioner has challenged the order of framing of charge by filing criminal revision application before the Sessions Court at Jalgaon vide Criminal Revision Application No. 92/2014. The learned Additional Sessions Judge, Jalgaon vide Judgment and order dated 06.03.2019 was pleased to quash and set aside the order passed by the learned J.M.F.C. below Exh. 01 dated 24.03.2014 in R.C.C. No. 506/2011 and directed to the competent authority to examine two witnesses namely, Vandana Bhoite and Bhaskar Bhoite, and thereafter, learned Magistrate was directed to pass appropriate order. Accordingly, the learned Magistrate vide order dated 25.09.2019 was pleased to proceed to frame charges

against the petitioner under section 4(2), 4(3), 5(1) read with Rule 9 and section 5(2) and 6(a) punishable under section 23 of the PC-PNDT Act, 2003. The charges under section 463 and 465 of I.P.C. were dropped by the said order.

9. The order passed by the learned J.M.F.C. Jalgaon dated 25.09.2019 regarding framing of charge below Exh.01 in R.C.C. No.506/2011 was again challenged before the Sessions Court at Jalgaon vide Criminal Revision Application No. 165/2019. The learned Additional Sessions Judge, Jalgaon by Judgment and order dated 30.08.2021 was pleased to dismiss the said revision and upheld the order passed by the learned J.M.F.C. dated 25.09.2019 regarding framing of charge.

10. In the above background, the petitioner is before this Court.

11. Mr Mohekar, learned counsel for the petitioner vehemently submitted that the proceedings initiated by the competent authority under the PC-PNDT Act, 2003 is itself not maintainable. The complaint has been filed assuming that complainant is an appropriate authority under the said Act. He submitted that the criminal prosecution lodged against the present petitioner suffers from this major legal defect. He pointed out copy of complaint filed by the competent authority (page 19). He submitted that the Chief Medical Officer, Jalgaon Municipal Corporation has no authority in the eye of law to lodge the criminal prosecution against the present petitioner under the provisions of the PC-PNDT Act, 2003.

12. Mr Mohekar, learned counsel for the petitioner submitted that according to section 28 of the PC-PNDT Act, 2003, the cognizance of an offence under that Act can only be taken only if the complaint is made by the officer or the person authorized therein. He submitted that in the present case, Dr Smt. Nirmala Babubhai Javeri (Sharma), (since dead replaced by Ram Rawlani) the Chief Medical Officer cannot be termed as an appropriate authority under the PC-PNDT Act, 2003. As such, the entire proceedings initiated by the so-called competent authority is liable to be quashed and set aside. Mr Mohekar, learned counsel for the petitioner has placed his reliance on the following citations in support of his submissions :-

- (i) ***Dr. Paayal W/o Shreekant Chobe Vs. The State of Maharashtra and others in Criminal Writ Petition No. 250/2015 decided by the Division Bench on 16th October, 2015***
- (ii) ***Dr Sai W/o Santosh Shiradkar Vs. State of Maharashtra and Anr. Reported in 2016(6) Mh.L.J.(Cri.) 677***
- (iii) ***Dr. Tanuja w/o Shriniwas Barde (Jadhav) and another Vs. State of Maharashtra and another reported in 2018 (6) Mh.L.J. (Cri.) 431***

13. Mr Mohekar, learned counsel for the petitioner submitted that there is no sufficient material to frame the charge against the present petitioner under the provisions of the PC-PNDT Act, 2003. Mr Mohekar, learned counsel has placed his reliance in case of ***Ghulam Hassan Beigh Vs. Mohammad Maqbool Magrey and Ors.*** reported in ***2022 LiveLaw (SC) 631.***

14. Mr Mohekar, learned counsel for the petitioner submitted that the patient Vandana Bhaskar Bhoite and her husband Bhaskar Vitthal Bhoite are the star witnesses in this case. Both of them have not supported to the prosecution case. Their evidence is not at all supporting to the prosecution case to frame the charge. The learned Magistrate as well as the learned Additional Sessions Judge, Jalgaon have committed an error in arriving at conclusion that there is *prima facie* case against the petitioner to frame the charge. He invited my attention to the copy of deposition of above said two witnesses and submitted that in view of the quality of evidence of above said two important witnesses, the prosecution case is badly damaged. The prosecution cannot succeed on such a weak quality of evidence.

15. Mr Mohekar, learned counsel submitted that the learned Magistrate and the learned Additional Sessions Judge as well did not consider the material on record in a proper perspective and arrived at incorrect conclusion for framing of charge. Both the orders are defective in the eye of law and liable to be quashed and set aside. It is necessary to discharge the petitioner from all the charges under the PC-PNDT Act, 2003 by allowing both petitions.

16. Mr G.O. Wattamwar, learned APP for the State/respondent No.1 supported the order passed by the learned Magistrate and the impugned Judgment and order rendered by the learned Additional Sessions Judge as well. He submitted that both the orders cannot be said to be defective in the eye of law. Both the Courts below after appreciating

the facts of the case, the evidence on record and considering the submissions of both the sides, passed reasoned orders. He submitted that object of the PC-PNDT Act, 2003 needs to be considered. It is a case of sex determination of foetus and termination of pregnancy on account female child. Serious irregularities were found in the hospital of the petitioner. Proper records and documentation were not found at the time of inspection. No satisfactory explanation was offered by the petitioner. He submitted that the criminal prosecution filed by the appropriate authority is on the basis of Government Resolution. It is not defective in the eye of law. He submitted that the citations referred by Mr Mohekar, learned counsel are not applicable to this case on the point of defect in filing of criminal case. He submitted that there is no merit in the petitions and liable to be dismissed.

17. Mr G.O. Wattamwar, learned APP for the State invited my attention to the prayers made in both the petitions. He pointed out that there is no prayer in both the petitions regarding quashing of the proceedings under the PC-PNDT Act, 2003. No ground is taken in either of the petitions taking plea that the criminal prosecution launched by the appropriate authority is defective for non-compliance of certain provisions of the PC-PNDT Act, 2003 and the Rules. As such, the submissions to that effect made by Mr Mohekar cannot be taken into consideration.

18. Mr M.V. Navandar, learned counsel for respondent No. 2/appropriate authority argued on similar lines. He submitted that the petitioner is taking undue advantage of the provisions of law by filing

various proceedings and thereby delaying the trial. He is putting obstacles. He submitted that while framing of charge, the Court cannot enter into the area of appreciation of evidence and consider whether on the basis of evidence, the accused is likely to be convicted or not. It is not permissible at the time of framing of charge. He submitted that there is sufficient material to frame charge against the petitioner under the provisions of the PC-PNDT Act, 2003. At the stage of framing of charge or considering the discharge application, the mini trial is not permissible.

19. Mr Navandar, learned counsel for respondent No. 2 has placed his reliance on following two citations :-

- (i) ***State of Rajasthan Vs. Ashok Kumar Kashyap reported in (2021) 2 Crimes 101 (SC)***
- (ii) ***Saranya Vs. Bharati and Another reported in (2022) AIR (SC) Cri. 79***

20. I have considered the submissions of Mr G.V. Mohekar, learned counsel for the petitioner, Mr G.O. Wattamwar, learned APP for the State and Mr M.V. Navandar, learned counsel for respondent No.2/appropriate authority. I have gone through the impugned orders and the documents and papers referred by the petitioner in respective petitions.

21. On going through the copy of complaint filed by the appropriate authority through Chief Medical Officer, Jalgaon Municipal Corporation (R.C.C. No. 506/2011), it would reveal that para No. 1 of the complaint relates to the authority given to the Chief Medical Officer for filing criminal prosecution which is assigned by the Municipal Commissioner, Jalgaon according to the PC-PNDT Act, 2003 and the Rules.

22. Mr Mohekar, learned counsel has placed his heavy reliance in case of ***Dr. Paayal W/o Shreekant Chobe Vs. The State of Maharashtra and others (supra)*** on the point of filing criminal prosecution by the appropriate authority under the PC-PNDT Act, 2003. In the cited case, the Medical Officer Health, Municipal Corporation, Aurangabad has filed criminal prosecution against the petitioner Dr. Paayal W/o Shreekant Chobe under the provisions of the PC-PNDT Act, 2003. The Division Bench of this Court held that the State Government has not notified the Medical Officer Health of Municipal Corporation to lodge the criminal prosecution under the PC-PNDT Act, 2003. It is further observed by the Division Bench that if the post of the District Civil Surgeon is available at Aurangabad, then neither the Medical Superintendent affiliated to the Medical College at Aurangabad nor the Health Officer of the Aurangabad Municipal Corporation can act as an appropriate authority under the PC-PNDT Act, 2003 for Aurangabad. In that background, the Division Bench held that Dr. Jayshree Kulkarni, (Medical Officer Health) cannot be an appropriate authority under the PC-PNDT Act, 2003. The facts of the cited case and the facts of the case in hand are distinguishable. The State Government by way of notification dated 2nd April, 2009, has appointed Medical Officers (Health) of the newly formed Municipal Corporations of Bhiwandi-Nijampur (District Thane), Mira-Bhayandar (District Thane), Malegaon (District Nashik), Akola (District Akola), Jalgaon (District Jalgaon), Dhule (District Dhule) and Ahmednagar (District Ahmednagar) as the Appropriate Authorities, for the respective areas for all the functioning to be under the PC-PNDT Act, 2003. As such, I do not find any

defect while lodging the criminal prosecution against the petitioner under the PC-PNDT Act, 2003 at the hands of Chief Medical Officer, Jalgaon Municipal Corporation, Jalgaon. The citations referred by Mr Mohekar, learned counsel for the petitioner on this point are not any way helpful to the petitioner's case.

23. Even one step ahead, the petitioner has not taken that ground in either of the petition. That point was not even raised before the trial court or before the learned Additional Sessions Judge. No prayer is made in either of the petition for quashing of criminal prosecution on account of that alleged legal defect while lodging the prosecution by the Chief Medical Officer in the capacity as an appropriate authority. Certainly, the submissions made by Mr Mohekar, learned counsel for the petitioner cannot be considered in absence of pleadings and prayers in the respective petitions.

24. It is material to note that the learned Chief Judicial Magistrate, Jalgaon was pleased to pass the order of issue process against the present petitioner under section 22 read with section 23 of the PC-PNDT Act, 2003 and section 463 and 465 of the Indian Penal Code long back in the year 2011. That order was challenged by way of criminal revision before the learned Additional Sessions Judge, Jalgaon. The proceedings of R.C.C. No. 506/2011 proceeded further for evidence before charge and accordingly, the learned Magistrate was pleased to pass order below Exh.01 in R.C.C. No. 506/2011 on 24.03.2014. The Magistrate has passed the order for framing charge against the present petitioner under section

4(2), 4(3), 5(1) read with Rule 9 and section 5(2) and 6(a) punishable under section 23 of the PC-PNDT Act, 2003. That order was challenged by way of Criminal Revision Application No. 92/2014 at the hands of the present petitioner. The order dated 24.03.2014 referred above came to be set aside by way of Criminal Revision Application No. 92/2014 with direction to the trial court to pass an appropriate order after evidence of two witnesses namely, Vandana Bhoite and her husband Bhaskar Bhoite is recorded. Accordingly, the learned Magistrate has recorded statement of witnesses namely, Vandana Bhaskar Bhoite and her husband Bhaskar Vitthal Bhoite and passed the order on 25.09.2019 that there is sufficient *prima facie* material against the petitioner to frame charge. That order was again challenged before the learned Additional Sessions Judge, Jalgaon vide Criminal Revision Application No. 165/2019. The learned Additional Sessions Judge, Jalgaon was pleased to dismiss that revision and upheld the order passed by the learned J.M.F.C., Jalgaon vide order dated 25.09.2019 in R.C.C. No. 506/2011.

25. The observations made by the learned J.M.F.C. vide order dated 25.09.2019 are important. It is observed by the learned Magistrate that there is sufficient *prima-facie* material on record to frame the charge against the accused under section 4(2) and section 4(3), 5(1) read with Rule 9 and section 5(2) and section 6(a) punishable under section 23 of the PC-PNDT Act, 2003. The learned Magistrate has observed that though Vandana Bhoite and her husband Bhaskar Bhoite have not supported to the prosecution case, there is enough material to proceed with the case by framing charge against the petitioner. It is also observed by the learned

Magistrate that there are serious allegations against the petitioner for termination of pregnancy of the patient - Vandana Bhoite after sex determination test coupled with serious lapses in maintaining the record and registers as contemplated under the PC-PNDT Act, 2003 and the Rules. The observations made by the learned J.M.F.C. came to be upheld at the hands of the learned Additional Sessions Judge, Jalgaon.

26. In case of ***State of M.P. Vs. S.B. Johri reported in 2000 A.I.R. S.C.W. 189***, it is held by the Hon'ble Supreme Court that it is settled law that at the stage of framing the charge, the Court has to *prima-facie* consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a *prima facie* case is made out for proceeding further then a charge has to be framed. The Court may peruse the record for limited purposes to appreciate evidence *prima-facie* as to whether offence has been committed but it is not required to marshal with a view to decide the reliability thereof.

27. In case of ***Saranya Vs. Bharathi and another (supra)***, the Hon'ble Supreme Court has made it clear that the High Court cannot enter into exercise of appreciation of evidence and consider whether on the basis of that evidence, the accused is likely to be convicted or not. It is not permissible at this stage. The High Court cannot exercise jurisdiction as an Appellate Court.

28. In ***State of Rajasthan Vs. Ashok Kumar Kashyap (supra)***, the Hon'ble Supreme Court has held that the High Court cannot exceed by holding a mini trial at the stage of discharge application.

29. The object of the PC-PNDT Act, 2003 is also to be borne in mind. It is a legislature to protect weaker sections of the Society. It is a measure for social justice. The provisions of the PC-PNDT Act, 2003 and the Rules thereunder need to be followed strictly. The trial is about to commence. It is not proper and legal to exercise the writ jurisdiction and to quash the order passed by the learned Magistrate and allow the discharge application moved by the petitioner by holding mini trial. Both the Criminal Writ Petitions devoid of merit. In the result, the following order is passed.

ORDER

- (i) Both the criminal writ petitions stand dismissed.
- (ii) No order as to costs.
- (iii) The trial in Regular R.C.C. No. 506/2011 pending on the file of Judicial Magistrate First Class, Jalgaon is hereby expedited.
- (iv) The learned Judicial Magistrate First Class, Jalgaon is hereby requested to give topmost priority to dispose of the said proceedings by looking towards its old nature.
- (v) Both the parties shall co-operate to the trial court for expeditious disposal of the proceedings.
- (vi) Inform to the concerned Court for information and necessary compliance.

[SHRIKANT D. KULKARNI, J.]

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